

## BILL ANALYSIS

Senate Research Center  
82R7209 JXC-F

S.B. 1234  
By: West  
Intergovernmental Relations  
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As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Although municipal management districts (MMDs) may be created through petition at the Texas Commission on Environmental Quality (TCEQ) under Chapter 375 (Municipal Management Districts in General), Local Government Code, MMDs are more commonly created through special law. The authority granted to each MMD is determined by the language contained in the bill that creates it, which varies to a large extent on the purpose for the creation of the district and its location.

The evolution in the use of MMDs and the use of MMDs as a tool for development has increased significantly over the past decade but corresponding changes to Chapter 375, Local Government Code, have not kept up with the current use of these districts. S.B. 1234 addresses this by making necessary amendments to better reflect the current use of MMDs, provide greater oversight by the appropriate state agencies, and clarify common administrative procedures.

As proposed, S.B. 1234 amends current law relating to municipal management districts.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 375.003(3) and (4), Local Government Code, to redefine "commission" and "disadvantaged business" in this chapter.

SECTION 2. Amends Section 375.022(c), Local Government Code, as follows:

(c) Requires that the petition:

(1) describe the boundaries of the proposed district:

(A) by metes and bounds;

(B) by verifiable landmarks, including a road, creek, or railroad line; or

(C) if there is a recorded map or plat and survey of the area, by lot and block number;

(2) and (3) Makes no changes to these subdivisions;

(4) include a name of the district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District"; and

(5) and (6) Makes no changes to these subdivisions.

SECTION 3. Amends Section 375.023, Local Government Code, as follows:

Sec. 375.023. New heading: NOTICE AND HEARING ON DISTRICT CREATION. Requires the Texas Commission on Environmental Quality (TCEQ), if a petition is filed under Section 375.022 (Petition), to give notice of an application as required by Section 49.011 (Notice Applicable to Creation of a District by the Commission), Water Code, and authorizes TCEQ to conduct a hearing on the application if TCEQ determines that a hearing is necessary under Section 49.011, Water Code. Deletes existing text requiring the Texas Natural Resource Conservation Commission (TNRCC) or a person authorized by TNRCC to set a date, time, and place for a hearing to consider each petition received. Deletes existing text requiring TNRCC or authorized person to issue a notice of the date, time, and place of hearing. Deletes existing text requiring that the notice state that each person has a right to appear and present evidence and testify for or against the allegations in the petition, the form of the petition, the necessity and feasibility of the district's project, and the benefits to accrue.

SECTION 4. Amends Section 375.025, Local Government Code, as follows:

Sec. 375.025. New heading: HEARING; GRANTING OR REFUSING PETITION. (a) Requires TCEQ, if TCEQ determines that a hearing is necessary under Section 49.011, Water Code, to conduct a hearing and accept evidence on the sufficiency of the petition and whether the district is feasible, practicable, and necessary and would be a benefit to all or any part of the land proposed to be included in the district. Authorizes TCEQ to adjourn the hearing from day to day. Deletes existing text requiring TNRCC, at a hearing set under Section 375.023, to examine the petition to determine its sufficiency. Deletes existing text authorizing any interested person to appear before TNRCC in person or by attorney and offer testimony on the sufficiency of the petition and whether the district is feasible and necessary and would be a benefit to all or any part of the land proposed to be included in the district.

(b) Deletes existing text authorizing TNRCC to adjourn the hearing from day to day.

(c) Requires TCEQ by order, if TCEQ finds, with or without a hearing, rather than after the hearing, that the petition conforms to the requirements of Section 375.022(c) and that the district is feasible, practicable, and necessary and would benefit the public, to make that finding and grant the petition.

(d) Creates this subsection from existing text. Requires TCEQ, in determining if the project is feasible, practicable, and necessary and would benefit the public, to consider the availability of comparable services from other systems, including special districts, municipalities, and regional authorities, and the reasonableness of the proposed public purpose projects and services.

SECTION 5. Amends Section 375.043, Local Government Code, as follows:

Sec. 375.043. ANNEXATION. Authorizes a district to annex land as provided by Chapters 49 (Provisions Applicable to All Districts) and 54 (Municipal Utility Districts), Water Code, subject to the approval of the governing body of the municipality. Makes a nonsubstantive change.

SECTION 6. Amends Section 375.044(b), Local Government Code, as follows:

(b) Requires the board of directors of a management district (board) to call a hearing on the exclusion of land or other property from the district if a signed petition evidencing the consent of the owners of a majority of the acreage in the district, according to the most recent certified tax roll of the county, is filed with the secretary of the board requesting the hearing before the issuance of bonds, rather than if a landowner or property owner in the district files with the secretary of the board a written petition requesting the hearing before the issuance of bonds.

SECTION 7. Amends Section 375.061, Local Government Code, to provide that a district is governed by a board of at least five, rather than nine, but not more than 30 directors who serve staggered four-year terms.

SECTION 8. Amends Section 375.071, Local Government Code, to provide that one-half of the serving directors constitutes a quorum, and require a concurrence of a majority of a quorum of directors for any official action of the district.

SECTION 9. Amends Section 375.091, Local Government Code, as follows:

Sec. 375.091. GENERAL POWERS OF DISTRICT. Deletes the existing Subsection (a) designation.

Deletes existing Subsection (b) authorizing the district to contract and manage its affairs and funds for any corporate purpose in accordance with Chapter 54 (Municipal Utility Districts), Water Code.

Deletes existing Subsection (c) providing that the district has all the rights, powers, privileges, authority, and functions of road districts and road utility districts created pursuant to Section 52 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), Article III (Legislative Department), of the Texas Constitution, including the power to levy ad valorem taxes for the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes, or in aid thereof. Deletes existing text providing that this power includes the power to levy ad valorem taxes to provide for mass transit systems in the manner and subject to the limitations provided in Section 52(a) (Loan or Grant of Public Money for Economic Development), Article III, of the Texas Constitution.

Deletes existing Subsection (d) providing that a district has those powers conferred by Chapters 365 (Road District Toll Roads) and 441 (Road Utility Districts), Transportation Code, and the additional rights, privileges, authority, and functions contained in those chapters.

SECTION 10. Amends Subchapter E, Chapter 375, Local Government Code, by adding Sections 375.0921 and 375.0922, as follows:

Sec. 375.0921. AUTHORITY FOR ROAD PROJECTS. (a) Authorizes a district, under Section 52, Article III, Texas Constitution, to design, acquire, construct, finance, issue bonds for, improve, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

(b) Authorizes the district to impose ad valorem taxes to provide for mass transit systems in the manner and subject to the limitations provided by Section 52, Article III, and Section 52-a (Loan or Grant of Public Money for Economic Development), Article III, Texas Constitution.

Sec. 375.0922. ROAD STANDARDS AND REQUIREMENTS. (a) Requires that a road project meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road project is located.

(b) Requires that a road project, if the road project is not located in the corporate limits or extraterritorial jurisdiction of a municipality, meet all applicable construction standards, subdivision requirements, and regulations of each county in which the road project is located.

(c) Requires the Texas Transportation Commission to approve the plans and specifications of the road project if the state will maintain and operate the road.

SECTION 11. Amends Section 375.097(a), Local Government Code, to authorize the hearings examiner to be an employee or contractor of the district, or a member of the district's board.

SECTION 12. Amends Subchapter E, Chapter 375, Local Government Code, by adding Section 375.098, as follows:

Sec. 375.098. DISTRICT ACT OR PROCEEDING PRESUMED VALID. (a) Provides that a governmental act or proceeding of a district is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(b) Provides that this section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 (Code Exclusively Governs) or 109.57 (Application of Code; Other Jurisdictions), Alcoholic Beverage Code; or

(4) a matter that on the effective date of this section:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

SECTION 13. Amends Section 375.114, Local Government Code, as follows:

Sec. 375.114. PETITION REQUIRED. Prohibits the board from financing services and improvement projects under this chapter unless a written petition has been filed with the board requesting those improvements or services signed by:

(1) the owners of 50 percent or more of the assessed value of the property in the district subject to assessment, according to the most recent certified county property tax rolls, rather than as determined from, the most recent certified county property tax rolls; or

(2) the owners of 50 percent or more of the surface area of the district, excluding roads, streets, highways, and utility rights-of-way, other public areas, and any other property exempt from assessment under Section 375.162 (Governmental Entities; Assessments) or 375.163 (Recreational, Park, or Scenic Use Property), according to, rather than as determined from, the most recent certified county property tax rolls.

SECTION 14. Amends Section 375.202(e), Local Government Code, to authorize the proceeds from the sale of bonds, if provided by the bond order or resolution, to be used to pay interest on the bonds during and after the period of the acquisition or construction of any improvement project to be provided through the issuance of the bonds, to pay administrative and operation

expenses to create a reserve fund for the payment of the principal of and interest on the bonds, to pay costs associated with the issuance of the bonds, and to create any other funds.

SECTION 15. Amends Section 375.205(a), Local Government Code, to provide that this subsection applies only to bonds that are public securities, as that term is defined by Section 1202.001 (Definitions), Government Code.

SECTION 16. Amends Subchapter J, Chapter 375, Local Government Code, by adding Section 375.209, as follows:

Sec. 375.209. TAXES FOR BONDS. Requires the board, at the time the district issues bonds payable wholly or partly from ad valorem taxes, to provide for the annual imposition of a continuing direct annual ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 (Tax Levy for Bonds) and 54.602 (Establishment of Tax Rate in Each Year), Water Code.

SECTION 17. Amends Section 375.221, Local Government Code, as follows:

Sec. 375.221. New heading: APPLICABILITY OF WATER DISTRICTS LAW TO COMPETITIVE BIDDING ON CERTAIN CONTRACTS. (a) Provides that, except as provided by Subsection (b) of this section, Subchapter I (Construction, Equipment, Materials, and Machinery Contracts), Chapter 49, Water Code, applies to a district contract for construction work, equipment, materials, or machinery.

(b) Creates this subsection from existing text. Authorizes the board to adopt rules governing receipt of bids and the award of the contract and providing for the waiver of the competitive bid requirement if certain situations exist. Deletes existing text authorizing a contract, other than a contract for services, for more than \$50,000 for the construction of improvements or the purchase of material, machinery, equipment, supplies, and other property, except real property, to be entered into only after competitive bids. Deletes existing text requiring notice of the contract for the purpose of soliciting bids to be published once a week for two consecutive weeks in a newspaper with general circulation in the area in which the district is located. Deletes existing text requiring the first publication of notice to be not later than the 14th day before the date set for receiving bids.

Deletes existing Subsection (b) requiring that competitive sealed proposals be asked from at least three persons if a proposed contract for works, plant improvements, facilities other than land, or the purchase of equipment, appliances, materials, or supplies is for an estimated amount of more than \$50,000 or for a duration of more than two years.

SECTION 18. Amends Section 375.263(a), Local Government Code, as follows:

(a) Authorizes the governing body of a municipality in which a district is wholly located, by a vote of not less than two-thirds of its membership, to adopt an ordinance dissolving the district. Deletes existing text providing for an exception under Section 375.264 (Limitation), relating to outstanding bonded indebtedness.

SECTION 19. Amends Section 375.264, Local Government Code, as follows:

Sec. 375.264. New heading: LIMITATION ON DISSOLUTION BY BOARD. Prohibits a district from being dissolved by its board, rather than by its board or by a municipality, if the district has any outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

SECTION 20. Amends Subchapter N, Chapter 375, Local Government Code, by adding Section 375.282, as follows:

Sec. 375.282. STRATEGIC PARTNERSHIP AGREEMENT. Authorizes a district with territory in the extraterritorial jurisdiction of a municipality to negotiate and enter into a written strategic partnership with the municipality under Section 43.0751 (Strategic Partnerships for Continuation of Certain Districts).

SECTION 21. Repealer: Section 375.021 (Areas Eligible for Creation of District), Local Government Code.

Repealer: Section 375.024 (Publication of Notice), Local Government Code.

Repealer: Section 375.027 (Municipality with Population More Than 1,500,000), Local Government Code.

Repealer: Section 375.064(f) (relating to requiring the governing body of the municipality or TNRCC, as appropriate, to make appointments to the board), Local Government Code.

SECTION 22. Makes application of the change in law made by this Act to Section 375.221, Local Government Code, prospective to January 1, 2012.

SECTION 23. Effective date: September 1, 2011.